

SENATE DISTRICT  
EXHIBIT NO. 22  
DATE 2/10/11  
SB 17, 18

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November 5, 2009

Our File: MO83-48

Senator Jim Shockley  
Senate District 45  
P.O. Box 608  
Victor, MT 59875

**Re: Jason Carroll & Cascade County Sheriff's Office**

Dear Senator Shockley:

By letters dated October 23, 2009, addressed to the Cascade County Commission, you have inquired regarding Jason Carroll, a former Cascade County Detention Officer. I was the attorney appointed through the Montana Association of Counties (MACo), the self insurance pool in which Cascade County participates, to represent the Sheriff's Office in the employment arbitration proceedings brought by Mr. Carroll through his Union representation. As such, I am responding to your inquiries. You have referred to the settlement of his employment claim as "handsome". In addition, you have inferred that the resolution was not with the Sheriff Office's approval. Set forth below is an explanation of this matter. Should you desire to discuss the matter directly, please do not hesitate to contact me.

Prior to preparing this letter, I discussed this matter again with Sheriff David Castle and Detention Center Warden and Chief Captain Dan O'Fallon so as to make certain there was no disagreement as to what occurred in the resolution of this matter. Sheriff Castle confirmed that he was made aware of the Union's settlement demands on behalf of Mr. Carroll, that he participated in settlement negotiation through telephone conferences with Captain O'Fallon and me, and that he agreed to the final terms and conditions of the settlement. Accordingly, to the extent you are under the impression that Sheriff's Office had no role in the settlement with Jason Carroll, that is incorrect. As counsel, I have no authority to enter a settlement without my client's consent. In this matter, the Sheriff's Office was my client. As such, only the Sheriff's Office, as well as MACo which funded the financial aspect of the settlement, could authorize the terms and conditions of settlement. Both did.

Senator Jim Shockley  
Senate District 45  
November 5, 2009  
Page 2

You have requested a copy of the file related to this matter ostensibly because the public's right to know outweighs Mr. Carroll's right to privacy. Whether that is true or not, I have no authority to make that decision. Whether the public's right to know exceeds an individual's right of privacy is a judicial determination. Until such time that judicial determination is made, the individual's right to privacy must be honored. Therefore, Mr. Carroll's file cannot be released at this time. However, I will share with you the background of the claim and the factors that contributed to its resolution. From your letters, it appears that you have already reviewed some of the file information, particularly the video of the taser event. Thus, I assume you are generally knowledgeable about the matter.

There were two disciplinary matters involving Jason Carroll's treatment of prisoners. The first incident involved Mr. Carroll's rough needle stick of an inmate to blood test his sugar level. The second involved the excessive use of force involving the tasing of another inmate. These events resulted in the decision by the Sheriff's Office to terminate his employment. In addition, the Sheriff's Office also issued citations to Mr. Carroll and turned that matter over to the Cascade County Attorney's Office. Through his Union, Mr. Carroll filed a grievance over his termination and, per the terms of the applicable Collective Bargaining Agreement, ultimately demanded arbitration of the dispute. I was the civil attorney assigned to defend the employment matter. I did not handle the criminal matter. It is my understanding that the Cascade County Attorney's Office is separately responding to your inquiry regarding the criminal prosecution.

With respect to the arbitration proceeding, I commenced to fully defend the Sheriff's Office. In addition to examining many other materials, I also reviewed the video of the taser event. Given that the inmate was providing only passive resistance to an order from Mr. Carroll, I concluded his actions in deploying the taser immediately upon entering the cell was a violation of the use of force policies. To further verify this conclusion, I also met with Sheriff Castle, Undersheriff Corneliusen, Captain O'Fallon, and Assistant Detention Center Administrator Handa. I reviewed the incident reports relating to the blood stick and taser events. I also reviewed Mr. Carroll's personnel and training files to verify he was knowledgeable about blood testing, taser operation, and use of force policies. I interviewed the Shift Sergeant, as Mr. Carroll claimed that he received the order to deploy the taser from him. I also interviewed the two other Detention Officers that entered the cell to confirm they believed the use of the taser was unnecessary. I also spoke with the Nurse and verified that Mr. Carroll violated the blood stick policy. I also spoke with the Detention Officer that witnessed the stick incident. In addition to the above, I retained a law enforcement expert, at MACo's expense, that would testify that the Sheriff Office's policies and procedures were within acceptable law enforcement standards and that Jason Carroll violated these standards warranting his

Senator Jim Shockley  
Senate District 45  
November 5, 2009  
Page 3

termination. This is just a sample of the measures I undertook to provide legal representation to the Sheriff's Office and a defense to this claim.

Mr. Carroll was represented by Max Hallfrisch, the Union agent, and Pat McKittrick, the Union attorney. The Union continually insisted the termination was not for just cause and demanded that Mr. Carroll be reinstated to his former position and paid his back wages and benefits. That was rejected. I proceeded with the exchange of documents and information with attorney McKittrick to prepare for the arbitration hearing. As that date grew near, the Union requested a face-to-face meeting to further discuss whether a resolution could be achieved. That meeting was held at my office. Captain O'Fallon appeared on behalf of the Sheriff's Office and Keith Stapley appeared on behalf of MACo. Mr. Carroll attended along with Union attorney McKittrick and Union representative Hallfrisch. The Union repeated the demands for reinstatement and back pay, which was again rejected. In lieu thereof, the Union demanded (1) that the County pay Mr. Carroll \$96,000, (2) that it expunge his disciplinary records, (3) that it provide a written letter of employment recommendation, (4) that the County not seek P.O.S.T. decertification, and (5) that the County agree to reverse the Department of Labor's determination that Mr. Carroll was ineligible for unemployment benefits. The Union insisted that the use of force policy was not knowingly violated, that the Sheriff's Office failed to use progressive discipline, that termination was too harsh under the circumstances, and that there was disparate treatment of other detention officers for similar infractions. The demands were communicated to Sheriff Castle, and they were rejected. Thereafter, I readied for the arbitration by, among other things, preparing my witnesses to give their testimony, preparing my exhibits for presentation, and preparing my examination of Mr. Carroll and his witnesses.

Captain O'Fallon and I arrived at the arbitration prepared to present the case on behalf of the Sheriff's Office. Union attorney McKittrick requested that settlement negotiations resume before the arbitration commenced. As you are aware, I am ethically bound to pass along any settlement offer to my client. Over the next few hours, discussions went back and forth between the parties and their representatives over possible terms and conditions of a settlement. Captain O'Fallon and I reported these discussions to Sheriff Castle and Keith Stapley for their input and decision. Ultimately, it was agreed through Sheriff Castle and Keith Stapley to settle the case (1) for the monetary sum of \$18,000, (2) that Mr. Carroll's disciplinary records would not be expunged, (3) that it was understood that P.O.S.T. which would reach its own determination as to his certification, (4) that the County would not provide a favorable letter of recommendation, (5) that Mr. Carroll's discipline record could be provided to any law enforcement agency that had an authorized release, and (6) that the Sheriff's Office would defer to the Department of Labor's findings should Mr. Carroll further appeal his unemployment disqualification. The Sheriff's Office also agreed that Mr.

Senator Jim Shockley  
Senate District 45  
November 5, 2009  
Page 4

Carroll could send a letter to be placed in the file claiming that he chose to resign his employment in order to terminate the arbitration proceedings. Relatedly, Captain O'Fallon was designated as the Sheriff's Office representative should there be any employment inquiries made about Mr. Carroll. In the absence of a release for disclosure of his disciplinary records, Captain O'Fallon would report his dates of employment, last position held, and his last rate of pay.

It is my recall that Sheriff Castle and Captain O'Fallon felt the settlement terms and conditions, save for the monetary sum, were no loss to the Sheriff's Office and no gain to Mr. Carroll. They believed Mr. Carroll would effectively be precluded from obtaining another law enforcement position in Montana and likely elsewhere, given that his P.O.S.T. certification would be in jeopardy and further given that no reliable law enforcement agency would consider him without obtaining his disciplinary records. As for payment of the monetary settlement, that has always been the sole authority of MACo through its agreements with the forty-five or so Counties that it insures. Nevertheless, Keith Stapley asked if Sheriff Castle was okay with the payment and, under the circumstances, Sheriff Castle stated he would go along with it. To minimize the effect of the payment, it was insisted and agreed upon that Mr. Carroll and the Union would keep it confidential.

In making the decision to settle the case, Sheriff Castle and Captain O'Fallon were aware that it was within the arbitrator's power to order Mr. Carroll's reinstatement. While we believed the case was defensible, as I am sure you are aware, any time you place the decision before a judge, jury, or arbitrator, you cannot guarantee the outcome. There were issues that we would confront in the course of the arbitration. While the Sheriff's Office was required to have "just cause" for Mr. Carroll's termination, proof of "just cause" can be at different levels. Ordinarily, the burden to prove "just cause" in a civil case is proof by a preponderance of the evidence. However, in the arbitration setting, where the conduct that gave rise to the termination could also give rise to criminal charges, which occurred here, the Sheriff's Office must prove "just cause" beyond a reasonable doubt. This is the highest standard of proof that could be imposed upon the Sheriff's Office. That essentially meant proof that Mr. Carroll had the criminal intent to harm the inmate. Mr. Carroll would testify that he believed he was utilizing appropriate force because he felt the inmate was more than passively resisting, because the inmate had acted violently in other circumstances, and because he believed his shift supervisor had authorized deployment of the taser. Therefore, there was the possibility that the arbitrator could conclude, using the elevated burden of proof, that Mr. Carroll had not violated the policy. Even if the arbitrator found that Mr. Carroll violated the policy, he could further conclude that Mr. Carroll did so negligently or even grossly negligently, but not criminally. If the arbitrator found that Mr. Carroll violated the policy, he could nevertheless also find that termination was too severe in light of Mr.

Senator Jim Shockley  
Senate District 45  
November 5, 2009  
Page 5

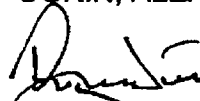
Carroll's otherwise satisfactory performance over the course of his employment and that some lesser form of discipline, such as a suspension, was more appropriate. Last, the Union would bring up other taser incidents in which officers had not been disciplined or terminated. We felt we could explain the distinctions with those events, but there is always a concern any time officers receive different treatment.

In the end, it came down to a decision whether we wanted to guarantee the outcome of the arbitration or whether we wanted to let the arbitrator make that decision. Sheriff Castle and Captain O'Fallon did not prefer the chance that Mr. Carroll could be reinstated. Accordingly, they made the decision to settle the case and guarantee the outcome that he would not be reinstated. I would not characterize the settlement as "handsome", but one that fulfilled the overall objectives of the Sheriff's Office, namely, guaranteeing the loss of his job and the inability to obtain employment in law enforcement elsewhere. With respect to the money, Mr. Carroll would have to pay most of it to his private attorney for defense fees owing in the criminal case and to the State of Montana for reimbursement of the unemployment benefits he had originally received.

I hope this report answers your inquiries. Please contact me directly should you have any other thoughts or questions. Given that there has not been a judicial determination that the public's right to know outweighs Mr. Carroll's right of privacy, I trust that you will not further disclose any of this information.

Sincerely,

UGRIN, ALEXANDER, ZADICK & HIGGINS, P.C.



Roger T. Witt

RTW/tmk

cc: Sheriff David Castle  
Captain Dan O'Fallon  
Keith Stapley  
Brian Hopkins